

## § 2.1211

## 10 CFR Ch. I (1–1–04 Edition)

(e) Reopen a closed record for the reception of further information at any time prior to initial decision in accordance with § 2.734;

(f) Administer oaths and affirmations;

(g) Issue initial decisions;

(h) Issue subpoenas requiring the attendance and testimony of witnesses at the hearing or the production of documents for the hearing;

(i) Receive written or oral evidence and take official notice of any fact in accordance with § 2.743(i);

(j) Appoint special assistants from the Atomic Safety and Licensing Board Panel in accordance with § 2.722;

(k) Recommend to the Commission that procedures other than those authorized under this subpart be used in a particular proceeding; and

(l) Take any other action consistent with the Act and this chapter.

[54 FR 8276, Feb. 28, 1989, as amended at 56 FR 29411, June 27, 1991]

### § 2.1211 Participation by a person not a party.

(a) The presiding officer may permit a person who is not a party to make a limited appearance in order to state his or her views on the issues. Limited appearances may be in writing or oral, at the discretion of the presiding officer, and are governed by rules adopted by the presiding officer. A limited appearance statement is not to be considered part of the decisional record under § 2.1251(c).

(b) Within 30 days of an order granting a request for a hearing under § 2.1205 (b) through (d) or, in instances when it is published, within 30 days of notice of hearing issued under § 2.1205(j), the representative of an interested State, county, municipality, Federally-recognized Indian Tribe, and/or agencies thereof, may request an opportunity to participate in a proceeding under this subpart. The request for an opportunity to participate must state with reasonable specificity the requester's area of concern about the licensing activity that is the subject matter of the proceeding. Upon receipt of a request that is filed in accordance with these time limits and that specifies the requester's areas of concern, the presiding officer shall afford the re-

quester a reasonable opportunity to make written and oral presentations in accordance with §§ 2.1233 and 2.1235, without requiring the representative to take a position with respect to the issues. Participants under this paragraph may notice an appeal of an initial decision in accordance with § 2.1253 with respect to any issue on which they participate.

[54 FR 8276, Feb. 28, 1989, as amended at 61 FR 39298, July 29, 1996; 64 FR 29213, June 1, 1999]

### § 2.1213 Role of the NRC staff.

If a hearing request is filed under § 2.1205(b), the NRC staff shall be a party to the proceeding. If a hearing request is filed under § 2.1205 (c) or (d), within 10 days of the designation of a presiding officer pursuant to § 2.1207, the NRC staff shall notify the presiding officer whether or not the staff desires to participate as a party to the adjudication. In addition, upon a determination by the presiding officer that the resolution of any issue in the proceeding would be aided materially by the staff's participation in the proceeding as a party, the presiding officer may order or permit the NRC staff to participate as a party with respect to that particular issue.

[61 FR 39298, July 29, 1996]

### § 2.1215 Appearance and practice.

(a) An individual may appear in an adjudication under this subpart on his or her own behalf or by an attorney-at-law. Representation by an attorney-at-law is not necessary in order for an organization or a § 2.1211(b) participant to appear in an adjudication conducted under this subpart. If the representative of an organization is not an attorney-at-law, he or she shall be a member or officer of the organization represented. Upon request of the presiding officer, an individual acting as a representative shall provide appropriate information establishing the basis of his or her authority to act in a representational capacity.

(b) Any action to reprimand, censure, or suspend a party, a § 2.1211(b) participant, or the representative of a party or a § 2.1211(b) participant must be in

## Nuclear Regulatory Commission

## § 2.1233

accordance with the procedures in § 2.713(c).

### HEARINGS

#### **§ 2.1231 Hearing file; prohibition on discovery.**

(a) Within thirty (30) days of the presiding officer's entry of an order granting a request for a hearing, the NRC staff shall file in the docket, present to the presiding officer, and make available to the applicant and any other party to the proceeding a hearing file. Thereafter, within ten (10) days of the date a petition for leave to intervene or a request to participate under § 2.1211(b) is granted, the NRC staff shall make the hearing file available to the petitioner or the § 2.1211(b) participant.

(1) The hearing file must be made available to the applicant and any other party or § 2.1211(b) participant to the proceeding either by—

(i) Service in accordance with § 2.1203(e); or

(ii) Making the file available at the NRC Web site, <http://www.nrc.gov>.

(2) The hearing file also must be made available for public inspection and copying at the NRC Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room.

(b) The hearing file will consist of the application and any amendment thereto, any NRC environmental impact statement or assessment relating to the application, and any NRC report and any correspondence between the applicant and the NRC that is relevant to the application. Hearing file documents already available at the NRC Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room when the hearing request is granted may be incorporated into the hearing file at those locations by a reference indicating where at those locations the documents can be found. The presiding officer shall rule upon any issue regarding the appropriate materials for the hearing file.

(c) The NRC staff has a continuing duty to keep the hearing file up to date with respect to the materials set forth in paragraph (b) of this section and to provide those materials for the docket, the presiding officer, and the applicant

or any party or § 2.1211(b) participant in a manner consistent with the way the hearing file was made available initially under paragraph (a).

(d) A party or § 2.1211(b) participant may not seek discovery from any other party, § 2.1211(b) participant, or the NRC or its personnel, whether by document production, deposition, interrogatories, or otherwise.

[54 FR 8276, Feb. 28, 1989, as amended at 64 FR 48949, Sept. 9, 1999]

#### **§ 2.1233 Written presentations; written questions.**

(a) After publication of a notice of hearing in accordance with § 2.1205(i) and after the NRC staff has made the hearing file available in accordance with § 2.1231, the parties and § 2.1211(b) participants shall be afforded the opportunity to submit, under oath or affirmation, written presentations of their arguments and documentary data, informational material, and other supporting written evidence at the time or times and in the sequence the presiding officer establishes by appropriate order. The presiding officer also may, on his or her initiative, submit written questions to the parties to be answered in writing, under oath or affirmation, and supported by appropriate documentary data, informational material, or other written evidence.

(b) In a hearing initiated under § 2.1205(b), the initial written presentation of the applicant that is issued a notice of proposed denial or a notice of denial must describe in detail any deficiency or omission in the agency's denial or proposed denial of its application and what relief is sought with respect to each deficiency or omission.

(c) In a hearing initiated under § 2.1205(d), the initial written presentation of a party that requested a hearing or petitioned for leave to intervene must describe in detail any deficiency or omission in the license application, with references to any particular section or portion of the application considered deficient, give a detailed statement of reasons why any particular sections or portion is deficient or why an omission is material, and describe in detail what relief is sought with respect to each deficiency or omission.